

DRAFT + FH:mlv - 1/29/75

MEMORANDUM

NSC Review Completed

TO: William B. Spong

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Kent CraneSUBJECT: The Dilemma of "Protection of Sources"

An urgent need arises to decide the manner in which the Commission ^{SHOULD} addresses the complex and controversial question of CIA authority in "protection of sources." The subject probably will come up Monday/Tuesday, February 3/4, at the forthcoming Committee II - Intelligence Meeting.

The National Security Act of 1947 gives the DCI the responsibility "for ^{PROTECTING} ~~prohibiting~~ intelligence sources and methods from unauthorized disclosure." Under this provision, CIA, ^{among other things} ~~among others~~, performs important counter-intelligence activities abroad, including surveillance of Americans. It also seeks to contain leaks and limit disclosures of important information. Recently the CIA has sought to re-enforce its statutory authority in this area, to match what it holds to be its responsibility and need.

The Commission initially contracted with Bill Harris to make a study of the issue. As this one paper could not encompass all the pros and cons of this complex ^{problem} ~~issue~~ and afford the Commission a basis of responsible judgment, the Committee II first draft avoided the issue. This may not

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be possible any longer to do and yet the Committee lacks any clear and comprehensive basis for taking a position.

Legally the issues seem to fall into the following areas:

1. Should CIA have any authority for protection of sources? Presumably it should because of its overseas counter-intelligence responsibility. In any event, a contrary case would have to be developed by lawyers who know intelligence.
2. CIA has recommended in its proposed legislation that it have some authority for prior restraint. To evaluate responsibility ^{TAKE} ~~for~~ this complex constitutional issue would be a major exercise; to say anything about it without such careful evaluation would be less than fully responsible.
3. CIA also proposes more restrictive disclosure statutes and much stronger criminal punishment for unauthorized disclosure. Again, highly controversial legislation on which the Commission should presumably be loathe to make judgments without very thorough and balanced evaluation. ^I It probably is not appropriate to the mandate simply to indicate

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BY STATING ONLY THAT
 the one side of the issue, ~~indicating~~ "a real
~~exists~~
 need to protect sources."

The question then is how to come to grips with ~~issues~~ ^{THE PROBLEM:}

1. Can we duck it, taking the position that intelligence is important to the support of the conduct of foreign policy but the Commission ~~could~~ ^{CAN} not look into every detail of the Intelligence function and still keep to its basic purpose, even as it cannot look into every corner of the Pentagon? To some this would be a cop-out.
2. Do we take a procedural route, pointing out that the issue is big, technical and constitutional and recommending a special commission, [?] ~~alternatively,~~ ^{CAN} ~~do~~ we indicate it is a Congressional matter and the Oversight Committees should address. [?] (Cop-out also? What are we in business for?)
3. Do we go after the substance and in the remaining weeks mount a panel of constitutional lawyers and intelligence specialists who can explore in whatever depth is ^{AND} necessary ~~to~~ make recommendations to the Commission ^{ON ALL ASPECTS.}

Other considerations:

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- a. Other Congressional and Executive Committees and Commissions cannot avoid being smothered in these same issues.
- b. Mounting publicity accompanies any discussion of the issues, e.g. Marchetti, Agee.

Fisher Howe

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II. THE DIRECTOR OF CENTRAL INTELLIGENCE

In the quarter century since the enabling act, the DCI has assumed the leadership of the Intelligence Community and taken full responsibility for the coordination of functions and organizations as well as for the production -- that is, correlation and evaluation -- of "national" intelligence reports and estimates. To these ends he has developed a) a "Community Staff" to assist him in the coordination of activities, and b) a group of National Intelligence Officers (NIOs) to assist in the preparation of coordinated substantive intelligence. On the other hand, as the Director of the Agency he has been directly in charge of all of its important collection and research assessment functions.

The DCI, quite clearly and purposefully, wears two hats. He is the principal adviser to the President and the NSC for intelligence and as such is responsible for the activities of the entire intelligence community. And he is also the head of CIA. Nor surprisingly, over the years proposals have frequently, and responsibly, been put forward to separate these two functions into two distinct positions, thus seeking to reduce the burden and to avoid what appeared at times to be

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a conflict of interest between the two duties. For reasons which the Commission believes to be altogether sound, this course has not been followed: neither of the two responsibilities could be strongly, or even adequately, discharged if divided. A DCI without his own agency would have great difficulty filling a leadership responsibility; an independent intelligence agency without a leadership responsibility would be at the mercy of the several departments, particularly the military.

In 1971, however, the President, on the recommendation of the Schlesinger Report, chose a compromise course: the DCI, while still in line responsibility over the CIA, should remove himself from the day-to-day direction of the agency and concentrate on his Community responsibilities. Although this directive, for a number of reasons, was never fully carried out, the Commission is impressed with its validity as a concept and with the undesirability of having the DCI preside over matters in which he is himself an interested party. The pattern of Chairman of the Board and President of a business enterprise, although only partially analagous, suggests itself in this connection. In this way the DCI should be significantly freed of a major management load but at the same time would not be wholly stripped of line responsibility which inevitably enhances his leadership capability.

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RECOMMENDATION : The Director of Central Intelligence should retain line authority over the CIA but delegate to the fullest possible extent the day-to-day management responsibility to the Deputy Director of the agency and himself concentrate on the important leadership role of the Intelligence Community.

The Commission has given some thought to the qualities to be sought in a DCI: what are the principal elements the President should look for in selecting a man for this taxing position, particularly as intelligence functions are, and inevitably will be, at once controversial and prominent in the public eye. In essence -- and part from the obvious characteristics of leadership, integrity, managerial talent and substantive knowledge of foreign affairs -- two perhaps conflicting demands are presented. There is need for a man with experience and professional talent in the highly technical field of intelligence. At the same time there is need for someone with high public standing, one at home in the swirl of political life; in short, a man of cabinet stature. The Commission believes that the latter qualifications should be dominant. Without excluding the possibility of a professional career officer

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achieving the position -- even as a Foreign Service Officer "could be" Secretary of State -- the Commission would favor the position being filled by a public figure, a "political" appointment.

RECOMMENDATION : The position of DCI should be filled by someone with the strong personal confidence of the President. The DCI should probably be drawn from public life, as a Cabinet officer, instead of being a professional career intelligence officer.

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V. RESOURCE MANAGEMENT

In dealing with the allocation of resources, three separate intractable problems plague the Intelligence Community:

- 1) The Director of Central Intelligence (DCI) has leadership responsibility over the entire Intelligence Community, but authority for budget resources, which is the basic instrument of control, remains with the Departments and agencies to whom Congress appropriates the funds. Thus, the DCI actually controls only 15 percent of the vast governmental intelligence budget; the remaining 85 percent is beyond his reach, principally in the realm of the Secretary of Defense.
- 2) A curious anomaly exists in the matter of duplication and size of effort in the function of assessment of research and analysis, positive value is to be found in some measure of redundancy and duplication of effort. Moreover, the cost of additional resources is generally not consequential. On the other hand, with the function of collection, the reverse is true: duplication

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is of no value and of high cost; and the "need" for more and more information is apparently limitless. Moreover, because of the technical facilities needed in collection, the high cost is almost impossible to assess in meaningful terms.

- 3) The normal difficulties in bureaucratic budget procedures are compounded in the intelligence area by the pervasive necessity for confidentiality which inhibits the normal governmental practices, especially those of open Congressional review.

The foregoing problems were explored with special thoroughness in an NSC/OMB study in 1971, led by James Schlesinger. The Schlesinger Report, endorsed by President Nixon and reaffirmed by President Ford, led to several important developments in the resource management effort of Intelligence Community. The Commission has leaned heavily upon that report and without exception has endorsed its proposals in respect to resource management. The recommendations which the Commission makes therefore are by way of being supplementary. However, because of the enormous size of the intelligence effort - several billions of dollars, and because the manner in which the resources of intelligence are allocated are at the heart of one of the two imperatives to which the Commission attaches such importance -- the imperative of Economy of Effort -- it has given great weight to these matters and makes its

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recommendations with particular care.

A. Intelligence Resources Advisory Committee (IRAC).

Following the recommendations of the Schlesinger Report, IRAC was established, shared by the DCI and including representatives of OMB and the main components of the intelligence community. It was designed to provide advice to the DCI on the allocation of resources in much the same way as does the USIB assist the DCI in the coordination of intelligence activities and the finished intelligence. IRAC apparently has proved itself to be a useful instrument. It meets regularly and has active working groups; its members have gained a much deeper understanding of the collection activities and problems of other members of the community. It has helped the DCI to identify some of the major collection resource issues even though members tend still to be defensive about their own organizations' resources.

The Commission's studies reveal that there is still a natural tendency to concentrate on proposals for new projects; the temptation is ever present to accept items uncritically because they are about the same as the previous year or generally within budget guidelines for increases, and to concentrate attention on proposed new items. An aggressive policy is needed to adjust this perspective. However, no specific

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recommendations are presented with respect to IRAC.

B. Intelligence Community Staff.

In accordance with the Schlesinger Report, the President directed the DCI to emphasize positive leadership in planning, reviewing, and evaluating intelligence programs and to structure and strengthen its personal staff to accomplish this. Since that time, the DCI personal staff - the IC staff - has been very substantially expanded and has become very much involved in community management. Its endeavors are in part directed at the guidelines for collection of intelligence and in the KIQ's program (Key Intelligence Questions) which are discussed in relation to the "Policymaker and Intelligence Support." Most importantly, the IC staff plays a central role in the resource allocation management, in the IRAC deliberations and in the whole budget process and procedures for the Intelligence Community. The Commission believes that the work of the IC staff is altogether constructive and useful and has no recommendations to make.

C. Budget Procedures.

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Ingredients of an effective resource management and of sound budgetary process are threefold:

- a clear understanding of the purposes for which resources are to be expended.
- a comprehensive plan and strategy which would relate programs for intelligence to these purposes.
- a consolidated presentation which relates agency budgets to coordinated programs and functional objectives.

To meet the foregoing demands, the DCI now has two important instrumentalities, which were the direct product of the Schlesinger Report.

- i) Perspectives for Intelligence 1975-1980 is an important annual substantive overview of the political, economic, and security environment anticipated in the next five years prepared by the DCI in collaboration with members of the Intelligence Community. This document has value in many aspects of intelligence support for policy. In terms of budget it could play a more effective part by setting a common base, reviewed annually, on which intelligence needs are structured.

Accordingly, the Commission believes that Perspectives, as prepared by the DCI, and coordinated in USIB and IRAC, should be reviewed and endorsed by the NSC and made the foundation block for resource allocation.

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- ii) Also pursuant to the Schlesinger Report recommendations, a Consolidated National Foreign Intelligence Budget has been pulled together by the DCI for the past three years. This Consolidated Budget presentation is valuable as it puts forward a consistent overall picture of the intelligence effort which can be reviewed in the normal budgetary process by OMB, by the President, and by Congress.

The remaining key ingredient to a sound resource management and budgetary process -- a comprehensive plan and strategy -- still needs to be developed. The Commission believes a start has been made but that strong steps should be taken by the DCI - with the constant backing of the NSC and in particular the full concurrence of the Secretaries of State and Defense - to formulate annually such a community-wide plan and strategy. This document should give a forward look to intelligence programs, should bring greater coherence to the community effort, and should afford the President and NSC a useful instrument in its direction of the Intelligence Community. The Plan and Strategy must critically examine on-going programs and in particular highlight the impact and future costs of current intelligence program and budget decisions. In addition, it should each year focus attention on the five or six major issues in the current community budget, on which the members of the Community, and the NSC should emphasize. In this way the Plan and

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Strategy could become for the DCI a far more effective instrument of leadership than the cumbersome and limited review process now carried out in conjunction with the OMB. Indeed, the Commission believes this instrument - an annual Plan and Strategy - could become a central means of Resources Management of the intelligence community on which the President can confidently rely.

In its examination of the economy of effort in the Intelligence Community, the Commission has struggled with the simple problem of size. It believes that significant curtailment is possible without crippling the intelligence support for policy and operations and that this curtailment can only be achieved by the strong leadership of the DCI and the strict budgetary review procedures it recommends. From testimony before it, however, the Commission has come firmly to the view that intelligence agencies must go to exceptional lengths to overcome inherent pressures for enlarged budgets. Despite the fact that roughly a 40 percent cutback has been made in personnel over the last five years, and that the overall intelligence budget has been held relatively constant, we are persuaded that agencies can make substantial further reductions.

RECOMMENDATION : The NSC should a) direct the DCI to prepare in addition to the Consolidated National Foreign Intelligence Budget and his Five-Year Perspectives for Intelligence, an annual "Plan and Strategy for Intelligence" to be the basis for

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agency budgets; b) require all intelligence agency budget submissions to conform to a tasking pattern determined by the DCI which would set agency responsibilities and budget limitations.

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VIII. Executive Oversight

The U.S. government must have adequate safeguards for overseeing U.S. foreign intelligence activities. The very nature of its work and the fact that it operates under the screen of secrecy, which greatly inhibits normal processors of oversight, makes this especially necessary.

Some constraints among CIA activities are of course built into the normal foreign policy procedures of the Executive branch. Intelligence officers, for example, deal with, and therefore are somewhat controlled by, policymakers. The CIA representative in each country abroad is subject to the overall direction of the US Ambassador -- although the privacy of communication makes this relationship difficult to control. In Washington CIA officials meet regularly with policy officers to review both substantive developments and operational activity.

More importantly, the 40 Committee of the NSC approves all covert actions undertaken by CIA. Elsewhere, the Commission recommends a strengthening of this important review procedure.

In addition to the foregoing, the President has need for an altogether independent body, free of operational responsibilities and removed from the possibility of any organizational bias, constantly to assess the effectiveness of the intelligence community and to oversee its conformity to the letter and the spirit of the President's wishes. President Eisenhower established a Citizens' Panel in 1956 to perform this oversight role. The group, now known as the President's Foreign Intelligence Advisory

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Board (PFIAB), is composed of [approximately] 12 distinguished private citizens, selected on a non-partisan basis, whose knowledge in previous experience qualify them as advisers on intelligence matters.

The PFIAB meets regularly two days every other month, and its chairman and various members devote time between meetings to the work of the Board. The Board is served by a two-man professional staff. In its early days, the Board played a role in the development of the U-2 and later in satellite systems. In recent years, the PFIAB has conducted several useful postmortem studies of alleged intelligence failures, such as Sihanoukville, Chile and the Middle East war of 1973. It has also produced constructive reports on ^{Special Source} substantive areas, such as on economic intelligence, on the growing Soviet naval power, on the Communist strategic threat, and, of special value, on human source intelligence.

The Commission believes that PFIAB has been an important source of advice to the President on the adequacy of the intelligence community, but that its full potential has not been realized. In large part this shortfall arises from limitations sometimes imposed on its relationship with the Chief Executive, including the interposition of staff layers and the infrequent personal meetings with the President.

RECOMMENDATION : PFIAB performs a critical function.

To be effective it must have the confidence of the President

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^{HS}
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Committee II believes that more effective Congressional
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